

August 19, 2002

D.T.E. 98-84/EFSB 98-5

Investigation by the Department of Telecommunications and Energy and the Energy Facilities Siting Board, on their own motions, commencing a Notice of Inquiry and Rulemaking, pursuant to M.G.L. c. 164 §§, 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 et seq., into (1) rescinding 220 C.M.R. §§ 10.00 et seq., and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I.

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HEARING OFFICERS' REQUEST FOR COMMENTS

The Department of Telecommunications & Energy ("Department") and the Energy Facilities Siting Board ("Siting Board") hereby seek comments on a proposed alternative process to the filing of long-range forecasts by electric companies required by G.L. c. 164, § 69I, and whether this alternative process would be in the public interest. These matters have been docketed as D.T.E. 98-84 and EFSB 98-5.

## I. BACKGROUND

### A. Statutory and Regulatory Background

G.L. c. 164, § 69I requires each Massachusetts electric company to file biennial forecasts of the electric power needs and requirements of its market area for the ensuing ten-year period. In the early 1990s, the Department implemented this long-range forecast requirement through a comprehensive integrated resource planning ("IRP") framework governing the procurement and cost recovery associated with resources to meet electric customers' electricity needs. 220 C.M.R. § 10.00 *et seq.* This framework provided for a regular, two-year planning cycle for all electric companies, encompassing several distinct phases including forecasting, need determination, negotiation, competitive solicitation, and contract approval.

Following the adoption of the Electric Industry Restructuring Act of 1997<sup>1</sup> ("Restructuring Act"), electric companies were no longer responsible for procuring electricity supplies for their customers, except for standard offer and default service. Thus, the complex review framework contemplated in the IRP regulations no longer seemed relevant. However, the Restructuring Act did not relieve electric companies of the obligation to file long-range forecasts under § 69I. Instead, the Restructuring Act placed the responsibility for determining the scope of future regulation of electric company planning jointly on the Department and the Siting Board by amending § 69I to include the following paragraph:

The department is authorized to exempt any electric or gas company from any or all provisions of this section upon a determination by the department and the siting board, after notice and hearing, that an alternative process is in the public interest.

Consequently, in August, 1998, the Department and the Siting Board jointly initiated an inquiry as to whether electric companies should be exempted from some or all of the provisions of G.L. c. 164,

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<sup>1</sup> Chapter 164 of the Acts of 1997, "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein."

§ 69I. This inquiry was docketed at D.T.E. 98-84/EFSB 98-5.<sup>2</sup>

B. Procedural History

On August 10, 1998, the Department issued an Order Commencing a Notice of Inquiry and Rulemaking into (1) rescinding 220 C.M.R. §§ 10.00 et seq. and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I (“NOI”). The Department requested comments to help develop an alternative process, or a set of alternative processes, that would allow the Department and the Siting Board to fulfill their duties under the Restructuring Act without conducting the detailed biennial review of electric utility forecast and supply plans required by § 69I. NOI at 3. The Siting Board issued a similar notice on August 13, 1998, specifically seeking comment on whether it would need to conduct a more extensive review of utility load forecasts in the context of petitions to construct electric transmission lines if electric companies were exempted from § 69I.

On September 14, 1998, the Department and Siting Board jointly conducted a public hearing on the issues raised in the NOIs. The agencies received oral or written comments from Representatives Murphy and Parente, the Division of Energy Resources, Boston Edison Company, Commonwealth Energy Company, Eastern Edison Company, Western Massachusetts Electric Company, Sithe New England Holdings, LLC and Independent System Operator-New England (“ISO-NE”). Most commenters suggested that the annual capacity, energy, loads and transmission (“CELT”) report, together with long-range transmission studies developed by the ISO-NE and each company’s FERC Form 715 (a transmission planning document) could serve as a foundation for the alternative process.<sup>3</sup> The Department conducted two technical sessions, one with representatives from ISO-NE on October 22, 1998, and one with Massachusetts electric companies on November 3, 1998.

On February 25, 1999, Staff requested electric companies and ISO-NE to report on how changes in the FERC-approved System Interconnection Standards (“SIS”) would affect transmission planning and siting, and to provide certain documents related to transmission planning and the revised SIS procedures. Staff also prepared a list of goals for the alternative process and asked NEPOOL and ISO-NE to comment on how to best meet these goals. Responses were filed in March and April, 1999.

II. PROPOSAL FOR ALTERNATIVE PROCESS

A. Objectives of an Alternative Process

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<sup>2</sup> As part of D.T.E. 98-84, the Department also initiated a rulemaking to rescind 220 C.M.R. §§ 10.00 et seq.

<sup>3</sup> In addition, all the electric companies supported rescinding 220 C.M.R. §§ 10.00 et seq.

In its 1998 NOI, the Department stated that a process that substitutes for the biennial filing of ten-year forecasts should:

- Promote cost-effective demand-side management (“DSM”);
- Allow the Department to assess distribution-related reliability issues; and
- Provide advance notification of developing transmission constraints.

Since the 1998 NOI was issued, it has become clear that certain of these objectives no longer are primarily the responsibility of the Department and the Siting Board. For example, ISO-NE, together with the Transmission Expansion Advisory Committee, is taking on a central role in identifying transmission constraints and measures to alleviate these constraints.

ISO-NE also has agreed with the New York ISO to jointly evaluate the feasibility of creating a Northeast Regional Transmission Organization (NERTO), which would be responsible for system expansion planning and for directing or arranging transmission system expansions, upgrades and interconnections to provide efficient, reliable, and non-discriminatory service.

Similarly, the Restructuring Act created a new mechanism to fund DSM programs and increased the role of the Division of Energy Resources in planning and overseeing DSM programs, while continuing to require the Department to evaluate and determine the cost-effectiveness of proposed programs. G.L. c. 25, § 19; G.L. c. 25A, § 11G; DTE Guidelines to Evaluate and Approve Energy Efficiency Programs, D.T.E. 98-100 (2000).

In light of these changes, the Department and the Siting Board have re-evaluated their objectives for an alternative process. The Department clearly retains the responsibility to ensure distribution system reliability. In addition, the Siting Board retains the responsibility to permit transmission lines proposed for construction in Massachusetts, and would benefit from reliable advance notice of planned facilities. In the following section, the agencies propose an alternative process that focuses on distribution system planning, but provides the Siting Board with advance notice of all planned transmission facilities that may fall under its jurisdiction.

## B. Proposed Alternative Process

### 1. Annual Forecast/Operating Report Requirements

The Department and the Siting Board propose that the core of the alternative process be an annual filing by investor-owned electric companies<sup>4</sup> that focuses on forecasts of electric loads to be served and the management of their local distribution systems. In a series of orders issued in March,

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<sup>4</sup> Municipal electric companies are not required to file long-range forecasts pursuant to G.L. c. 164, § 69I. See Acts of 1996, c. 97, §§ 1-2.

2002,<sup>5</sup> the Department directed the four Massachusetts investor-owned electric distribution companies to submit annual planning reports, beginning January 1, 2003. These annual reports must include:

- ten-year peak demand load forecasts for its service area;
- planning criteria and guidelines for the entire distribution system planning process;
- an operating study report showing power flows and voltages for normal and emergency conditions;
- listing of critical loads (e.g., hospitals) by town and the circuits by which they are fed;
- listing of significant reliability and infrastructure improvement projects; and
- prioritization of future projects.

The annual reports required by the Department are similar in content to the long-range forecasts required by § 69I with respect to forecasts of the need for electric power within a company's service area, and plans for facility upgrades or construction within the service area. The annual report requirements are more detailed than the § 69I requirements with respect to operation of the distribution system and analysis of system reliability. However, unlike the § 69I forecasts, the annual reports required by the Department do not address energy procurement, the cost-effective acquisition of demand-side management resources, or related supply planning issues. In Section III, below, the agencies seek comment on the use of these annual reports as the central element of an alternative process.

## 2. Notice of Future Projects

Because the Department's annual reporting requirement focuses on distribution system-level planning, the data and analysis provided pursuant to this requirement may not include a comprehensive list of transmission projects that would require review by the Department under G.L. c. 164, § 72 or by the Siting Board under § 69I. Therefore, the agencies propose that, concurrent with its annual distribution system report, each electric company would be required to file a description of all transmission projects planned to be built within, or partially within, its service territory in the following three years. For the purposes of this reporting requirement, transmission projects would include the construction of any new transmission line (including any line with a voltage of 69 kV or greater), and any upgrade project on existing transmission lines (including any line with a voltage of 69 kV or

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<sup>5</sup> NSTAR Electric, D.T.E. 01-65 (2002); Western Massachusetts Electric Company, D.T.E. 01-66 (2002); Fitchburg Gas & Electric Light Company, D.T.E. 01-67 (2002); Massachusetts Electric Company & Nantucket Electric Company, D.T.E. 01-68 (2002).

greater), regardless of the purpose of the project.<sup>6</sup> The list should include known projects to be undertaken by entities other than the reporting electric company (e.g., a bulk transmission project traversing the service territories of several electric companies, or the construction of a third-party transmission line that interconnects with the electric company's transmission or distribution system). In addition, each electric company would be required to provide a less detailed list of transmission projects which it anticipates may become necessary within three to ten years of the filing. In Section III, below, the agencies seek comment on these proposed reporting requirements.

1. Effect on Proposals to Construct Transmission Lines Pursuant to G.L. c. 164, § 69J

G. L. c. 164, § 69J, provides that:

No applicant shall commence construction of a facility at a site unless a petition for approval of construction of that facility has been approved by the board and, in the case of an electric or gas company which is required to file a long-range forecast pursuant to section sixty-nine I, that facility is consistent with the most recently approved long-range forecast for that company.

If an alternative process is adopted, electric companies would be exempted from the provisions G.L. c. 164, § 69I requiring them to file a long-range forecast. Consequently, an electric company proposing a transmission project under G.L. c. 164, § 69J would no longer be required to show that its project is consistent with its most recently-approved long-range forecast.

The Siting Board historically has relied on the Department's review and approval of electric company forecasts filed pursuant G.L. c. 164, § 69I when evaluating the need for transmission facilities proposed by investor-owned utilities, particularly when the anticipated need was based on projected load growth. See, New England Power Company, 4 DOMSB 109 (1995); New England Power Company, 5 DOMSB 1 (1996); Boston Edison Company, 6 DOMSB 208 (1997). The annual filing required under the alternative process may provide useful background information for certain types of transmission proposals. However, "... in the absence of regular Department review of long range forecasts, it may become necessary for the Siting Board to conduct more extensive reviews of utility load forecasts in the context of petitions to construct jurisdictional facilities such as electric transmission lines ...". Norwood Municipal Light Department, 5 DOMSB 109, at 127, n.15 (1997). The Siting Board intends to address a broad range of transmission

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<sup>6</sup> The Department and the Siting Board recognize that this list is likely to include projects that do not require review under either G.L. c. 164, § 72 or § 69J, and may exclude certain sub-transmission lines that could require review under G.L. c. 164, § 72.

planning and siting issues, including the scope of its review of utility load forecasts, in a rulemaking to be opened later this year. In Section III, below, the Siting Board seeks comments on several transmission planning issues in order to help it to frame a draft rule.

## 2. IRP Regulations

If the Department finds that an alternative process for the forecast requirement contained in § 69I is in the public interest, the regulations governing integrated resource planning, 220 CMR 10.00 et seq. will be rendered obsolete. The Department, therefore, proposes to rescind 220 CMR 10.00 et seq. following the adoption of an alternative process. See NOI, at 2-3.

## III. PUBLIC HEARING AND COMMENTS

In light of the statutory changes brought about by the Restructuring Act and industry responses since 1998, and consistent with the Department's request in D.T.E. 98-84, the Department and the Siting Board now seek comments as to whether their proposal to adopt the alternative process outlined in Section II.B, above; to exempt electric companies from § 69I as it pertains to the filing of long-range forecasts; and to repeal 220 C.M.R. 10.00 et seq. is in the public interest. In addition to general comments on this matter, the Department and Siting Board seek responses to the following questions:

1. Does the proposed alternative process provide all the information that the Department needs to help ensure distribution system reliability? What additional elements, if any, should be included in an alternative process that focuses on distribution system reliability?
2. Are there issues other than those raised in Section II.A above which must necessarily be included in an alternative process that is consistent with the public interest? If so, what are these issues, and why are they important?
3. Is further definition of any element of the alternative process proposed in Section II.B needed to ensure that there is a common understanding of electric company responsibilities under the alternative process?

Further, in order to assist it in developing a draft rule regarding proposals for new transmission projects, the Siting Board seeks responses to the following:

4. Can the need for a transmission project predicated on load growth be described more effectively, efficiently, and consistently through standardized annual forecasts or by project-specific inquiry?
5. To what extent could data from the annual report provided to the Department be used to

demonstrate the need for transmission projects proposed primarily for support of the distribution system? To what extent could data from the annual report be aggregated to document the need for transmission projects intended for the transfer of bulk power within a single utility's service territory, or between service territories?

6. What information should be filed in support of a load forecast submitted in the context of a transmission facility proceeding under G.L. c. 164, § 69J?
7. What is the appropriate role of ISO-NE or a regional transmission organization in providing justification for new transmission facilities?

The Department and the Siting Board will conduct a joint public hearing to receive oral comment in this matter on **Thursday, September 26, 2002**, beginning at 10:00 a.m., at the Department of Telecommunications and Energy, One South Station, 2<sup>nd</sup> Floor, Boston, Massachusetts, 02110. In addition, any interested person may file written comments in this matter no later than the close of business, **Thursday, September 12, 2002**.

Comments in this matter may not exceed 20 pages in length. Commenters must file one original and nine copies of all comments with Mary Cottrell, Secretary, Department of Telecommunications and Energy, One South Station - 2<sup>nd</sup> Floor, Boston, Massachusetts 02110. All written comments also should be submitted to the Department in electronic format. Electronic submissions should be made using one of the following methods: (1) by e-mail attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us) and [william.stevens@state.ma.us](mailto:william.stevens@state.ma.us) and or (2) on a 3.5" disk, IBM-compatible format. The text of the e-mail or the disk label must specify (1) the docket number of the proceeding (D.T.E. 98-84/EFSB 98-5), (2) the name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix), in Microsoft Word (naming the document with a ".doc" suffix), or as an Adobe PDF file (naming the document with a ".pdf" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. All written pleadings or comments submitted in electronic format will be posted on the Department's website, <http://www.mass.gov/dpu>.

Any person desiring further information regarding this notice should contact the Hearing Officers in this case: William H. Stevens, Jr., Hearing Officer, Department of Telecommunications and Energy, at (617) 305-3620; or Selma Urman, Hearing Officer, Energy Facilities Siting Board, at (617) 305-3525.

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Date

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William H. Stevens, Jr.  
Hearing Officer



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Date

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Selma Urman  
Hearing Officer